

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JONATHAN D. COOPER, State Bar No. 141461
Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 703-1404
Facsimile: (415) 703-5480

6 Attorneys for Complainant
7

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-235

13 **BORIS TARTAKOVSKY**
14 196 Appleton Avenue
San Francisco, California 94110

**DEFAULT DECISION
AND ORDER**

Registered Nurse License No. 464997

[Gov. Code, §11520]

Respondent.

16 **FINDINGS OF FACT**

17 1. On or about February 1, 2008, Complainant Ruth Ann Terry, M.P.H.,
18 R.N., in her official capacity as the Executive Officer of the Board of Registered Nursing,
19 Department of Consumer Affairs, filed Accusation No. 2008-235 against Boris Tartakovsky
20 (Respondent) before the Board of Registered Nursing.

21 2. On or about March 31, 1991, the Board of Registered Nursing (Board)
22 issued Registered Nurse License No. 464997 to Respondent. The Registered Nurse License
23 expired on December 31, 2006, and has not been renewed.

24 3. On or about February 6, 2008, James Mirarchi, an employee of the
25 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
26 2008-235, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
27 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
28 which was and is: 196 Appleton Avenue, San Francisco, California 94110. An additional copy

1 was mailed to Respondent at: Napa State Hospital, 2100 Napa Vallejo Highway, Napa,
2 California, 94558. A copy of the Accusation is attached as exhibit A, and is incorporated herein
3 by reference.

4 4. Service of the Accusation was effective as a matter of law under the
5 provisions of Government Code section 11505, subdivision (c).

6 5. On or about February 13, 2008, the aforementioned documents were
7 returned by the U.S. Postal Service marked "Addressee Unknown."

8 6. Business and Professions Code section 118 states, in pertinent part:

9 (b) The suspension, expiration, or forfeiture by operation of law of a
10 license issued by a board in the department, or its suspension, forfeiture, or
11 cancellation by order of the board or by order of a court of law, or its surrender
12 without the written consent of the board, shall not, during any period in which it
13 may be renewed, restored, reissued, or reinstated, deprive the board of its
authority to institute or continue a disciplinary proceeding against the licensee
upon any ground provided by law or to enter an order suspending or revoking the
license or otherwise taking disciplinary action against the license on any such
ground.

14 7. Government Code section 11506 states, in pertinent part:

15 (c) The respondent shall be entitled to a hearing on the merits if the
16 respondent files a notice of defense, and the notice shall be deemed a specific
17 denial of all parts of the accusation not expressly admitted. Failure to file a notice
of defense shall constitute a waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a hearing.

18 8. Respondent failed to file a Notice of Defense within 15 days after service
19 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
20 Accusation No. 2008-235.

21 9. California Government Code section 11520 states, in pertinent part:

22 (a) If the respondent either fails to file a notice of defense or to appear at
23 the hearing, the agency may take action based upon the respondent's express
24 admissions or upon other evidence and affidavits may be used as evidence without
any notice to respondent.

25 10. Pursuant to its authority under Government Code section 11520, the Board
26 finds Respondent is in default. The Board will take action without further hearing and, based on
27 the evidence on file herein, finds that the allegations in Accusation No. 2008-235 are true.

28 11. The total cost for investigation and enforcement in connection with the

1 Accusation are \$2,225.50 as of May 15, 2008.

2 DETERMINATION OF ISSUES

3 1. Based on the foregoing findings of fact, Respondent Boris Tartakovsky
4 has subjected his Registered Nurse License No. 464997 to discipline.

5 2. A copy of the Accusation is attached.

6 3. The agency has jurisdiction to adjudicate this case by default.

7 4. The Board of Registered Nursing is authorized to revoke Respondent's
8 Registered Nurse License based upon the Cause for Discipline in the Accusation, alleging that
9 Respondent is unable to practice his profession safely due to a mental or physical illness
10 affecting his competency.

11 ORDER

12 IT IS SO ORDERED that Registered Nurse License No. 464997, heretofore
13 issued to Respondent Boris Tartakovsky, is revoked.

14 Pursuant to Government Code section 11520, subdivision (c), Respondent may
15 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
16 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
17 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
18 statute.

19 This Decision shall become effective on August 30, 2008

20 It is so ORDERED July 31, 2008

21 *LaTranene W Tate*

22 FOR THE BOARD OF REGISTERED NURSING
23 DEPARTMENT OF CONSUMER AFFAIRS

24
25 Attachment:

26 Exhibit A: Accusation No.2008-235
27
28

Exhibit A

Accusation No. 2008-235

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JONATHAN D. COOPER, State Bar No. 141461
Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 703-1404
Facsimile: (415) 703-5480

6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2008-235

11 **BORIS TARTAKOVSKY**
12 196 Appleton Avenue
San Francisco, California 94110

A C C U S A T I O N

13 Registered Nurse License No. 464997

14 Respondent.
15

16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
20 Department of Consumer Affairs.

21 2. On or about March 31, 1991, the Board of Registered Nursing issued
22 Registered Nurse License Number 464997 to Boris Tartakovsky (Respondent). The Registered
23 Nurse License expired on December 31, 2006, and has not been renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Registered Nursing
26 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
27 references are to the Business and Professions Code unless otherwise indicated.
28

STATUTORY PROVISIONS

4. Section 822 of the Code states, in pertinent part:

If a licensing agency determines that its licensee's ability to practice his or her profession safely because the licensee is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

- a. Revoking the licensee's certificate or license.
- b. Suspending the licensee's right to practice.
- c. Placing the licensee on probation.
- d. Taking such other action in relation to the licensee as the licensing agency in its discretion deems proper.

5. Section 2750 of the Business and Professions Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

7. California Penal Code section 1370 provides, in pertinent part:

(a)(1)(A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent.

(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental

1 competence, or placed on outpatient status as specified in Section 1600.

2
3 (2) Prior to making the order directing that the defendant be confined in a state
4 hospital or other treatment facility or placed on outpatient status, the court shall proceed as
5 follows:

6 (A) The court shall order the community program director or a designee to
7 evaluate the defendant and to submit to the court within 15 judicial days of the order a written
8 recommendation as to whether the defendant should be required to undergo outpatient treatment,
9 or committed to a state hospital or to any other treatment facility. No person shall be admitted to
10 a state hospital or other treatment facility or placed on outpatient status under this section without
11 having been evaluated by the community program director or a designee.

12 (B) The court shall hear and determine whether the defendant, with advice of his
13 or her counsel, consents to the administration of antipsychotic medication, and shall proceed as
14 follows:

15
16 (ii) If the defendant does not consent to the administration of medication, the court
17 shall hear and determine whether any of the following is true:

18 (I) The defendant lacks capacity to make decisions regarding antipsychotic
19 medication, the defendant's mental disorder requires medical treatment with antipsychotic
20 medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it
21 is probable that serious harm to the physical or mental health of the patient will result.
22 Probability of serious harm to the physical or mental health of the defendant requires evidence
23 that the defendant is presently suffering adverse effects to his or her physical or mental health, or
24 the defendant has previously suffered these effects as a result of a mental disorder and his or her
25 condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental
26 disorder does not alone establish probability of serious harm to the physical or mental health of
27 the defendant.

28 (II) The defendant is a danger to others, in that the defendant has inflicted,

1 attempted to inflict, or made a serious threat of inflicting substantial physical harm on another
2 while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of
3 inflicting substantial physical harm on another that resulted in his or her being taken into custody,
4 and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger
5 of inflicting substantial physical harm on others. Demonstrated danger may be based on an
6 assessment of the defendant's present mental condition, including a consideration of past
7 behavior of the defendant within six years prior to the time the defendant last attempted to inflict,
8 inflicted, or threatened to inflict substantial physical harm on another, and other relevant
9 evidence.

10 (III) The people have charged the defendant with a serious crime against the
11 person or property; involuntary administration of antipsychotic medication is substantially likely
12 to render the defendant competent to stand trial; the medication is unlikely to have side effects
13 that interfere with the defendant's ability to understand the nature of the criminal proceedings or
14 to assist counsel in the conduct of a defense in a reasonable manner; less intrusive treatments are
15 unlikely to have substantially the same results; and antipsychotic medication is in the patient's
16 best medical interest in light of his or her medical condition.

17 ...

18 CAUSE FOR DISCIPLINE

19 (Mental or Physical Illness Affecting Competency)

20 8. Respondent's license is subject to discipline under section 822 of the Code
21 in that he is unable to practice his profession safely due to a mental or physical illness affecting
22 his competency. The circumstances are as follows:

23 9. On or about April 4, 2007, in San Francisco Superior Court case number
24 200878, entitled People v. Tartakovsky, the Respondent was found to be incompetent to stand
25 trial on felony charges.

26 10. On or about May 25, 2007, in the same case name and number,
27 Respondent was committed to Napa State Hospital pursuant to California Penal Code sections
28 1370(a)(1)(B) and 1370(a)(2). The court found that Respondent was suffering from a

1 deteriorating mental disorder (Penal Code section 1370(a)(2)(B)(ii)(I)); that, as a result of a
2 mental disorder, Respondent constituted a danger to others (Penal Code section
3 1370(a)(2)(B)(ii)(II)); and that administration of antipsychotic medication to Respondent was in
4 Respondent's best medical interest (Penal Code section 1370(a)(2)(B)(ii)(III)).

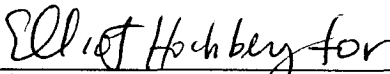
5 **PRAYER**

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein
7 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

8 1. Revoking or suspending Registered Nurse License Number 464997, issued
9 to Boris Tartakovsky;

10 2. Taking such other and further action as deemed necessary and proper.

11 DATED: 2/1/08

12
13 
14 RUTH ANN TERRY, M.P.H., R.N.
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant
20
21
22
23
24
25
26
27
28